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LETTER DATED 20 MAY 1996 FROM THE SECRETARY-GENERAL ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

I have the honour to submit to you, and through you to the members of the Security Council, the text of a memorandum of understanding concluded today between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995) of 14 April 1995 (see annex I). I am also submitting to you a letter handed over by the Head of the Iraqi delegation upon signing the memorandum (see annex II).

The memorandum represents an important step in the arrangements that are required under the resolution to bring it fully into effect. Once all the necessary actions have been taken, I will be in a position to report to the Security Council as provided for in paragraph 13 of the resolution. The present letter, therefore, is submitted with a view to keeping the Council abreast of the progress achieved so far in the implementation of the resolution.

(Signed) Boutros BOUTROS-GHALI

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Annex I

Memorandum of understanding between the Secretariat of the United Nations and the Government of Iraq on the implementation of Security Council resolution 986 (1995)

Section I

General provisions

1. The purpose of this memorandum of understanding is to ensure the effective implementation of Security Council resolution 986 (1995) (hereinafter the resolution).

2. The distribution plan referred to in paragraph 8 (a) (ii) of the resolution, which has to be approved by the Secretary-General of the United Nations, constitutes an important element in the implementation of the resolution.

3. Nothing in the present memorandum should be construed as infringing upon the sovereignty or territorial integrity of Iraq.

4. The provisions of the present memorandum pertain strictly and exclusively to the implementation of the resolution and, as such, in no way create a precedent. It is also understood that the arrangement provided for in the memorandum is an exceptional and temporary measure.

Section II

Distribution plan

5. The Government of Iraq undertakes to guarantee effectively equitable distribution to the Iraqi population throughout the country of medicine, health supplies, foodstuffs and materials and supplies for essential civilian needs (hereinafter humanitarian supplies) purchased with the proceeds of the sale of Iraqi petroleum and petroleum products.

6. To this end, the Government of Iraq shall prepare a distribution plan describing in detail the procedures to be followed by the competent Iraqi authorities with a view to ensuring such distribution. The present distribution system of such supplies, the prevailing needs and humanitarian conditions in the various governorates of Iraq shall be taken into consideration with due regard to the sovereignty of Iraq and the national unity of its population. The plan shall include a categorized list of the supplies and goods that Iraq intends to purchase and import for this purpose on a six-month basis.

7. The part of the distribution plan related to the three northern governorates of Arbil, Dihouk and Suleimaniyeh shall be prepared in accordance with appendix I, which constitutes an integral part of this memorandum.

8. The distribution plan shall be submitted to the Secretary-General of the United Nations for approval. If the Secretary-General is satisfied that the plan adequately ensures equitable distribution of humanitarian supplies to the Iraqi population throughout the country, he will so inform the Government of Iraq.

9. It is understood by the parties to this memorandum that the Secretary-General will not be in a position to report as required in paragraph 13 of the resolution unless the plan prepared by the Government of Iraq meets with his approval.

10. Once the Secretary-General approves the plan, he will forward a copy of the categorized list of the supplies and goods, which constitutes a part of the plan, to the Security Council Committee established by resolution 661 (1990) concerning the situation between Iraq and Kuwait (hereinafter the 661 Committee) for information.

11. After the plan becomes operational, each party to the present memorandum may suggest to the other for its consideration a modification to the plan if it believes that such adjustment would improve the equitable distribution of humanitarian supplies and their adequacy.

Section III

Establishment of the escrow account and audit of that account

12. The Secretary-General, after consultations with the Government of Iraq, will select a major international bank and establish there the escrow account described in paragraph 7 of the resolution, to be known as "the United Nations Iraq account" (hereinafter the Iraq account). The Secretary-General will negotiate the terms of this account with the bank and will keep the Government of Iraq fully informed of his actions in choosing the bank and opening the account. All transactions and deductions mandated by the Security Council under paragraph 8 of the resolution shall be made from the Iraq account, which will be administered in accordance with the relevant Financial Regulations and Rules of the United Nations.

13. The Iraqi authorities might designate a senior banking official to liaise with the Secretariat of the United Nations on all banking matters relating to the Iraq account.

14. In accordance with the United Nations Financial Regulations, the Iraq account will be audited by the Board of Auditors who are external independent public auditors. As provided for in the Regulations, the Board of Auditors will issue periodic reports on the audit of the financial statements relating to the account. Such reports will be submitted by the Board to the Secretary-General who will forward them to the 661 Committee and to the Government of Iraq.

15. Nothing in this memorandum shall be interpreted to create a liability on the part of the United Nations for any purchase made by the Government of Iraq or any agents acting on its behalf pursuant to the provisions of the resolution.

Section IV

Sale of petroleum and petroleum products originating in Iraq

16. Petroleum and petroleum products originating in Iraq will be exported via the Kirkuk-Yumurtalik pipeline through Turkey and from the Mina al-Bakr oil terminal. The 661 Committee will monitor the exports through those outlets to ensure that they are consistent with the resolution. Transportation costs in Turkey will be covered by an additional amount of oil, as foreseen in the resolution and in accordance with procedures to be established by the 661 Committee. The arrangement between Iraq and Turkey concerning the tariffs and payment modalities for the use of Turkish oil installations has been provided to the 661 Committee.

17. Each export of petroleum and petroleum products originating in Iraq shall be approved by the 661 Committee.

18. Detailed provisions concerning the sale of Iraqi petroleum and petroleum products are contained in appendix II, which constitutes an integral part of this memorandum.

Section V

Procurement and confirmation procedures

19. The purchase of medicine, health supplies, foodstuffs, and materials and supplies for essential civilian needs of the Iraqi population throughout the country, as referred to in paragraph 20 of resolution 687 (1991), will, subject to paragraph 20 below, be carried out by the Government of Iraq, will follow normal commercial practice and be on the basis of the relevant resolutions of the Security Council and procedures of the 661 Committee.

20. The purchase of humanitarian supplies for the three northern governorates of Arbil, Dihouk and Suleimaniyeh, as provided for in the distribution plan, will be carried out in accordance with appendix I.

21. The Government of Iraq will, except as provided for in paragraph 20, contract directly with suppliers to arrange the purchase of supplies, and will conclude the appropriate contractual arrangements.

22. Each export of goods to Iraq shall be at the request of the Government of Iraq pursuant to paragraph 8 (a) of the resolution. Accordingly, exporting States will submit all relevant documentation, including contracts, for all goods to be exported under the resolution to the 661 Committee for appropriate action according to its procedures. It is understood that payment of the supplier from the Iraq account can take place only for items purchased by Iraq that are included in the categorized list referred to in section II of the present memorandum. Should exceptional circumstances arise, applications for the export of additional items may be submitted to the 661 Committee for its consideration.

23. As noted above, the 661 Committee will take action on applications for the export of goods to Iraq in accordance with its existing procedures subject to future modifications under paragraph 12 of the resolution. The 661 Committee will inform the Government of Iraq, requesting States and the Secretary-General of the actions taken on the requests submitted.

24. After the 661 Committee has taken action on the applications for export in accordance with its procedures, the Central Bank of Iraq will request the bank holding the Iraq account to open irrevocable letters of credit in favour of the beneficiaries. Such requests shall be referred by the bank holding the Iraq account to the United Nations Secretariat for approval of the opening of the letter of credit by the latter bank, allowing payment from the Iraq account upon presentation of credit-conform documents. The letter of credit will require as condition of payment, inter alia, the submission to the bank holding the Iraq account of the documents to be determined by the procedures established by the 661 Committee, including the confirmations by the agents referred to in paragraph 25 below. The United Nations, after consultations with the Government of Iraq, shall determine the clause to be inserted in all purchase orders, contracts and letters of credit regarding payment terms from the Iraq account. All charges incurred in Iraq are to be borne by the applicant, whereas all charges outside Iraq are for the account of the beneficiary.

25. The arrival of goods in Iraq purchased under the plan will be confirmed by independent inspection agents to be appointed by the Secretary-General. No payments can be made until the independent inspection agents provide the Secretary-General with authenticated confirmation that the exported goods concerned have arrived in Iraq.

26. The independent inspection agents may be stationed at relevant Iraqi entry points, customs areas or other locations where the functions set out in paragraph 27 of this section can be performed. The number and location of the stationing points for the agents will be designated by the United Nations after consultations with the Government of Iraq.

27. The independent inspection agents will confirm delivery to Iraq of shipments. They will compare the appropriate documentation, such as bills of lading, other shipping documents or cargo manifests, and the documents issued by the 661 Committee, against goods actually arriving in Iraq. They will also have the authority to perform duties necessary for such confirmation, including: quantity inspection by weight or count, quality inspection including visual inspection, sampling and, when necessary, laboratory testing.

28. The inspection agents will report all irregularities to the Secretary-General and to the 661 Committee. If the problem is related to normal commercial practice (e.g., some shortlanded goods), the 661 Committee and the Government of Iraq are informed, but normal commercial resolution practices (e.g., claims) go forth. If the matter is of serious concern, the independent inspection agents will hold the shipment in question pending guidance from the 661 Committee.

29. As regards the export to Iraq of parts and equipment which are essential for the safe operation of the Kirkuk-Yumurtalik pipeline system in Iraq, the

requests will be submitted to the 661 Committee by the national Government of the supplier. Such requests will be considered for approval by the Committee in accordance with its procedures.

30. If the 661 Committee has approved a request in accordance with paragraph 29, the provisions of paragraph 24 shall apply. However, since the supplier can expect payment against future oil sales, as stated in paragraph 10 of the resolution, the proceeds of which are to be deposited in the Iraq account, the bank holding the Iraq account will issue an irrevocable letter of credit stipulating that payment can only be effected when at the time of drawing the Iraq account has sufficient disposable funds and the United Nations Secretariat approves the payment.

31. The requirement of authenticated confirmation of arrival provided for in this section shall apply also to the parts and equipment mentioned in paragraph 29.

Section VI

Distribution of humanitarian supplies purchased under the distribution plan

32. The distribution of humanitarian supplies shall be undertaken by the Government of Iraq in accordance with the distribution plan referred to in section II of the present memorandum. The Government of Iraq will keep the United Nations observation personnel informed about the implementation of the plan and the activities that the Government is undertaking.

33. The distribution of humanitarian supplies in the three northern governorates of Arbil, Dihouk and Suleimaniyeh shall be undertaken by the United Nations Inter-Agency Humanitarian Programme on behalf of the Government of Iraq under the distribution plan with due regard to the sovereignty and territorial integrity of Iraq in accordance with appendix I.

Section VII

Observation of the equitable distribution of humanitarian supplies and determination of their adequacy

General provisions

34. The United Nations observation process will be conducted by United Nations personnel in Iraq under the overall authority of the Department of Humanitarian Affairs at United Nations Headquarters in New York in accordance with the provisions described below. Such observation shall apply to the distribution of humanitarian supplies financed in accordance with the procedures set out in the resolution.

35. The objectives of the United Nations observation process shall be:

(a) To confirm whether the equitable distribution of humanitarian supplies to the Iraqi population throughout the country has been ensured;

(b) To ensure the effectiveness of the operation and determine the adequacy of the available resources to meet Iraq's humanitarian needs.

Observation procedures

36. In observing the equitable distribution and its adequacy, United Nations personnel will use, inter alia, the following procedures.

Food items

37. The observation of the equitability of food distribution will be based on information obtained from local markets throughout Iraq, the Iraqi Ministry of Trade, the information available to the United Nations and its specialized agencies on food imports, and on sample surveys conducted by United Nations personnel. The observation will also include the quantity and prices of food items imported under the resolution.

38. To provide regular updated observation of the most pressing needs, a survey undertaken by United Nations agencies in cooperation with the appropriate Iraqi ministries will serve as a baseline for the continuing observation of nutritional status of the population of Iraq. This information will take account of public health data generated by the Ministry of Health and the relevant United Nations agencies.

Medical supplies and equipment

39. Observation regarding distribution of medical supplies and equipment will focus on the existing distribution and storage system and will involve visits to hospitals, clinics as well as medical and pharmaceutical facilities where such supplies and equipment are stored. Such observation will also be guided by health statistics data from the Ministry of Health and surveys by relevant United Nations agencies.

Water/sanitation supplies and equipment

40. Observation of distribution of water/sanitation supplies and equipment will focus on the determination that they are used for their intended purposes. Confirmation will be carried out by collecting data on the incidence of water-borne diseases and by water quality control checks by visits to water and sanitation facilities by representatives of relevant United Nations agencies. In this regard the United Nations will rely on all relevant indicators.

Other materials and supplies

41. With reference to materials and supplies which do not fall within the three areas indicated above, in particular, those needed for the rehabilitation of

infrastructures essential to meet humanitarian needs, observation will focus on confirmation that such materials and supplies are delivered to the predefined destinations in accordance with the distribution plan and that they are used for their intended purposes, and on the determination of whether these materials and supplies are adequate or necessary to meet essential needs of the Iraqi population.

Coordination and cooperation

42. The United Nations observation activities will be coordinated by the Department of Humanitarian Affairs at United Nations Headquarters in New York. Observation will be undertaken by United Nations personnel. The exact number of such personnel will be determined by the United Nations taking into account the practical requirements. The Government of Iraq will be consulted in this regard.

43. The Iraqi authorities will provide to United Nations personnel the assistance required to facilitate the performance of their functions. United Nations personnel will coordinate with the Iraqi competent authorities.

44. In view of the importance of the functions which United Nations personnel will perform in accordance with the provisions of this section of the memorandum, such personnel shall have, in connection with the performance of their functions, unrestricted freedom of movement, access to documentary material which they find relevant having discussed the matter with the Iraqi authorities concerned, and the possibility to make such contacts as they find essential.

Section VIII

Privileges and immunities

45. In order to facilitate the successful implementation of the resolution the following provisions concerning privileges and immunities shall apply:

(a) Officials of the United Nations and of any of the specialized agencies performing functions in connection with the implementation of the resolution shall enjoy the privileges and immunities applicable to them under articles V and VII of the Convention on the Privileges and Immunities of the United Nations, or articles VI and VIII of the Convention on the Privileges and Immunities of the Specialized Agencies to which Iraq is a party;

(b) Independent inspection agents, technical experts and other specialists appointed by the Secretary-General of the United Nations or by heads of the specialized agencies concerned and performing functions in connection with the implementation of the resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities accorded to experts on mission for the United Nations or for the specialized agency under article VI of the Convention on the Privileges and Immunities of the United

Nations or the relevant Annexes of the Convention on the Privileges and Immunities of the Specialized Agencies respectively;

(c) Persons performing contractual services for the United Nations in connection with the implementation of the resolution, whose names will be communicated to the Government of Iraq, shall enjoy the privileges and immunities referred to in subparagraph (b) above concerning experts on mission appointed by the United Nations.

46. In addition, officials, experts and other personnel referred to in paragraph 45 above shall have the right of unimpeded entry into and exit from Iraq and shall be issued visas by the Iraqi authorities promptly and free of charge.

47. It is further understood that the United Nations and its specialized agencies shall enjoy freedom of entry into and exit from Iraq without delay or hindrance of supplies, equipment and means of surface transport required for the implementation of the resolution and that the Government of Iraq agrees to allow them, temporarily, to import such equipment free of customs or other duties.

48. Any issue relating to privileges and immunities, including safety and protection of the United Nations and its personnel, not covered by the provisions of this section shall be governed by paragraph 16 of the resolution.

Section IX

Consultations

49. The Secretariat of the United Nations and the Government of Iraq shall, if necessary, hold consultations on how to achieve the most effective implementation of the present memorandum.

Section X

Final clauses

50. The present memorandum shall enter into force following signature, on the day when paragraphs 1 and 2 of the resolution become operational and shall remain in force until the expiration of the 180-day period referred to in paragraph 3 of the resolution.

51. Pending its entry into force, the memorandum shall be given by the United Nations and the Government of Iraq provisional effect.

SIGNED this 20th day of May 1996 at New York in two originals in English.

For the United Nations

(Signed) Hans CORELL
Under-Secretary-General
The Legal Counsel

For the Government of Iraq

(Signed) Abdul Amir AL-ANBARI
Ambassador Plenipotentiary
Head of the delegation of Iraq

Appendix I

1. In order to ensure the effective implementation of paragraph 8 (b) of the resolution, the following arrangements shall apply in respect of the Iraqi governorates of Arbil, Dihouk and Suleimaniyeh. These arrangements shall be implemented with due regard to the sovereignty and territorial integrity of Iraq, and to the principle of equitable distribution of humanitarian supplies throughout the country.

2. The United Nations Inter-Agency Humanitarian Programme shall collect and analyse pertinent information on humanitarian needs in the three northern governorates. On the basis of that information, the Programme will determine the humanitarian requirements of the three northern governorates for discussion with the Government of Iraq and subsequent incorporation in the distribution plan. In preparing estimates of food needs, the Programme will take into consideration all relevant circumstances, both within the three northern governorates and in the rest of the country, in order to ensure equitable distribution. Specific rehabilitation needs in the three northern governorates shall receive the necessary attention.

3. Within a week following the approval of the distribution plan by the Secretary-General, the Programme and the Government of Iraq will hold discussions to enable the Programme to determine how the procurement of humanitarian supplies for the three northern governorates can be undertaken most efficiently. These discussions should be guided by the following considerations. The bulk purchase by the Government of Iraq of standard food commodities and medicine may be the most cost-effective means of procurement. Other materials and supplies for essential civilian needs, specifically required for the three northern governorates, may be more suitably procured through the United Nations system in view of technical aspects related to their proper use.

4. To the extent that purchases and deliveries are made by the Government of Iraq in response to the written communication of the Programme, an amount corresponding to the cost of the delivered goods will be deducted from the amount allocated to the Programme from the "Iraq account".

5. Humanitarian supplies destined for distribution in the three northern governorates shall be delivered by the Programme to warehouses located within these governorates. Such supplies can also be delivered by the Government of Iraq or the Programme, as appropriate, to warehouses in Kirkuk and Mosul. The warehouses shall be managed by the Programme. The Government of Iraq shall ensure the prompt customs and administrative clearances to enable the safe and quick transit of such supplies to the three northern governorates.

6. The Programme shall be responsible in the three northern governorates for the storage, handling, internal transportation, distribution and confirmation of equitable distribution of humanitarian supplies. The Programme will keep the Government of Iraq informed on the implementation of distribution.

7. Whenever possible and cost-effective, the Programme shall use appropriate local distribution mechanisms which are comparable to those existing in the rest

of Iraq in order to effectively reach the population. Recipients under this arrangement will pay a fee for internal transportation, handling, and distribution as in the rest of the country. The Programme shall ensure that the special needs of internally displaced persons, refugees, hospital in-patients and other vulnerable groups in need of supplementary food are appropriately met, and will keep the Government of Iraq informed.

8. The Programme will observe that humanitarian supplies are used for their intended purposes, through visits to sites and by collecting relevant data. The Programme will report to the Department of Humanitarian Affairs at United Nations Headquarters in New York and the Government of Iraq any violation observed by the Programme.

Appendix II

1. The State concerned or, if the 661 Committee so decides, the national petroleum purchaser authorized by the 661 Committee, shall submit to the Committee for handling and approval the application, including the relevant contractual documents covering the sales of such petroleum and petroleum products, for the proposed purchase of Iraqi petroleum and petroleum products, endorsed by the Government of Iraq or the Iraqi State Oil Marketing Organization (SOMO) on behalf of the Government. Such endorsement could be done by sending a copy of the contract to the 661 Committee. The application shall include details of the purchase price at fair market value, the export route, opening of a letter of credit payable to the "Iraq account", and other necessary information required by the Committee. The sales of petroleum and petroleum products shall be covered by contractual documents. A copy of these documents shall be included in the information provided to the 661 Committee together with the application for forwarding to the independent inspection agents described in paragraph 4 of this appendix. The contractual documents should contain the following information: quantity and quality of petroleum and petroleum products, duration of contract, credit and payment terms and pricing mechanism. The pricing mechanism for petroleum should include the following points: marker crude oil and type of quotations to be used, adjustments for transportation and quality, and pricing dates.

2. Irrevocable confirmed letters of credit will be opened by the oil purchaser's bank with the irrevocable undertaking that the proceeds of the letter of credit will be paid directly to the "Iraq account". For this purpose, the following clauses will have to be inserted in each letter of credit:

"- Provided all terms and conditions of this letter of credit are complied with, proceeds of this letter of credit will be irrevocably paid into the 'Iraq account' with ... Bank."

"- All charges within Iraq are for the beneficiary's account, whereas all charges outside Iraq are to be borne by the purchaser."

3. All such letters of credit will have to be directed by the purchaser's bank to the bank holding the "Iraq account" with the request that the latter adds its confirmation and forwards it to the Central Bank of Iraq for the purpose of advising SOMO.

4. The sale of petroleum and petroleum products originating in Iraq will be monitored by United Nations independent oil experts appointed by the Secretary-General of the United Nations to assist the 661 Committee. The monitoring of oil exports will be carried out by independent inspection agents at the loading facilities at Ceyhan and Mina al-Bakr and, if the 661 Committee so decides, at the pipeline metering station at the Iraq-Turkey border, and would include quality and quantity verification. They would authorize the loading, after they receive the information from the United Nations oil experts that the relevant contract has been approved, and report to the United Nations.

5. The United Nations will receive monthly reports from SOMO on the actual volume and type of petroleum products exported under the relevant sales contracts.

6. The United Nations Secretariat and SOMO shall maintain continuing contact and in particular United Nations oil experts shall meet routinely with SOMO representatives to review market conditions and oil sales.

Annex II

Letter dated 20 May 1996 from the Head of the delegation of Iraq addressed to the Legal Counsel

In reference to the memorandum of understanding signed today and as I advised you during the discussion that a letter would be sent to you concerning the position of Iraq as to the cost of production and transportation of oil inside Iraq, I state below Iraq's position which I request that you include in the official record of our discussion:

The Iraqi delegation explained during the discussion that the cost of production and transportation of petroleum excluding expenses in local currency, is currently estimated at US$ 2.00 per barrel. Such cost had to be deducted from the sale price or recovered through the production and export of extra quantity of petroleum and petroleum products. In either case the amount referred to above would be deposited in the "Iraq account" to be utilized for the import of spare parts and other items necessary for the maintenance and sustaining of production and transportation operations as is the established practice in the oil industry, otherwise production and transportation operations would be hindered and eventually come to a halt.

Nevertheless, and in order to facilitate the conclusion of this memorandum of understanding, the Iraqi delegation agreed not to insist on the acceptance of its position by the United Nations Secretariat delegation at this stage and agreed to have it included in a separate letter addressed to the Head of the delegation of the United Nations Secretariat for consideration in any future discussion.

Although the matter is not discussed, the Iraqi delegation wishes to state that a third outlet for Iraqi petroleum export could be via the Syrian Arab Republic.

(Signed) A. Amir ANBARI
Ambassador
Head of the delegation of Iraq